Keynote Speech

INSOL International - Africa Roundtable
11-12 October 2013, Radisson Blu Hotel, Lusaka

Building Africa’s Credit Environment for Growth: How insolvency regimes can improve the cost and availability of credit

Delivered by: Hon. Wynter M Kabimba, SC, MP, Minister of Justice.

Distinguished Guests, Honourable Judges and Members of the Judiciary, Ladies and Gentlemen.

Let me firstly take a moment to welcome all of you to Zambia. Looking at the delegate list, I see we have guests from all parts of Africa, Bermuda, USA, UK and Holland. You come to Zambia in the hottest month of the year and just before the commencement of the rains. Welcome to Zambia.

The Africa Round Table initiative supported by INSOL International and the World Bank has gained significant momentum and continues to be well supported and
In what started as a Round Table discussion in February 2010 in Dubai at INSOL’s Global Annual Conference with around twenty (20) participants has now almost reached close to hundred (100) participants. This is tremendous and merely confirms the need for public policy makers and private insolvency practitioners to better engage and drive the agenda for regional harmonization and insolvency reforms across Africa.

The objectives of the Africa Roundtable were threefold:

- to have a high level dialogue with both private practitioners and public policymakers regarding insolvency reform in Africa, thereby encouraging reform experiences to be shared and challenges to be discussed in an open and frank forum;

- to elevate insolvency reform on the African policy agenda; and,

- to encourage insolvency policymakers and professionals to establish an annual forum to stimulate discourse and learning across the region.

It is therefore important for us to understand where we are and where we are hoping to head to.
There are currently fewer insolvency reforms across Africa than in any other region of the world. In many African countries insolvency laws are antiquated and restructuring laws do not exist. Doing Business 2011 data demonstrates that debt recovery in Sub-Saharan Africa averages only 23.2 cents on the dollar, compared to 69.1 cents on the dollar in OECD countries.¹

Clearly, there are many different issues facing countries in the region and the solutions are complex. For example:

- there are inadequate mechanisms to prevent the stripping of assets of companies in financial difficulty heading towards insolvency, which means that a business rescue culture is minimal;

- many directors lack accountability and in some cases robust Corporate Governance structures are lacking;

- the insolvency profession is neither institutionalised nor regulated;

¹ http://www.doingbusiness.org/data/exploretopics/closing-a-business
• delays in finalising cases by courts negatively affect the efficiency of the system but are also a cause of concern to Lenders;

• non-court based methods are underdeveloped and out-of-court restructuring is not prevalent;

• the skills of stakeholders including the judiciary and insolvency practitioners need to be developed, and countries need to focus on both institutional and infrastructural reforms that will seek to preserve value in financially distressed businesses.

Going back to the theme of this Round Table meeting; 

*Building Africa’s Credit Environment for Growth: How insolvency regimes can improve the cost and availability of credit*

Africa is a vast region with diverse legal systems and practices, varying from English Common Law, Roman Dutch Law, French Civil Law and Islamic Law and that in adjoining countries.
Multilateral bodies such as the World Bank already engaged in insolvency reforms in some countries and others carry a keen interest in working for the benefit of the insolvency industry in the region. The knowledge, experience and resources available within these global institutions and bodies can be optimised by way of a coordinated regional effort, aimed at addressing the needs of the insolvency industry.

As the World shrinks into a highly connected, complex and inter-dependent globe, our respective regions and countries become exposed to global trends.

Africa is typically viewed from afar as a continent ravaged by poverty, disease, famine, civil unrest, corruption and inadequate or dilapidated infrastructure.

For anyone who has ventured into the many African countries that make up this vast continent, the story is now very different - a story of real optimism and excitement.

There are many positive stories; and many developments. The phenomenal rise of the African entrepreneurial flair
and their wanting to compete in the global landscape is by far the most encouraging.

Some of the greatest GDP growth rates, and in some cases GDP growth rates of as high as 8% in a generally depressed Global Economy shows real hope for Africa. According to the World Bank, between 2011-2015, six (6) out of the top ten (10) fastest growing Economies in the World will be from Africa, with Zambia being one of them.

Africa continues to grow rapidly and with that comes growing pains. We find that our regulatory frameworks including the insolvency regimes are inadequate to support such burgeoning growth.

Some of our legislation might still be copies or at least derived from colonial era Acts. Whilst some legislation might still be adequate and relevant, there are a number of areas where our legislation is lacking.

We have too often found that the laws and institutions that we rely on for driving our economies forward, critically handicap the same businesses and entrepreneurs that they are meant to serve and help.
Across Africa, access to credit can be low and the cost high, with in the main, commercial banks being the principal source of credit.

Hence our dilemma; our growth to some extent is stifled by what can be termed as expensive cost of borrowing and the inability of the banks to provide innovative and cost effective lending.

But can the blame be squarely placed on the banks/lenders alone? I would think not. Banks have a duty to their shareholders and continue in their business to minimize risks and maximizing return for their shareholders.

Banks equally need to be assured that their lending is productive and can be recovered expeditiously and within the normally accepted default parameters.

My challenge to this Round Table gathering is therefore in as much as possible for the private sector practitioners and public policy makers to engage in meaningful dialogue to put into place proactive solutions and legislation for business rescue to in as much as possible promote the culture of value preservation in businesses.

All too often value in businesses is lost because of the inability of parties to quickly respond to unfavourable
situations; be it denial by the directors of failing businesses, change in market conditions or even the inability of banks to act quickly to a default situation in the hope that the problem will go away which inevitably doesn’t and compounds the problem further.

Since 2008 and at the height of the Global Financial Crisis, the effects of which we still feel today, pressure continues to mount on public policy makers as well as private practitioners, to come up with legal frameworks which support businesses in distress much higher up the corporate demise curve, and well before the business spirals out of control.

The USA as we know has in place the famed Chapter 11 Bankruptcy Protection, the UK has the Enterprise Act and South Africa recently enacted the Chapter 6 Business Rescue mechanism.

In as much as business rescue mechanisms can be put in place through the legal reforms process, business as well as banks should equally feel comforted at the ability of the private practitioners to professionally and diligently discharge their duties.

In Zambia, and I have no doubt that in many other African countries as well, the choice of the insolvency practitioners determines, the success of business rescue, or not, as the
case may be.

I hasten to add that unfortunately the reckless conduct of some insolvency practitioners has tarnished the image of this noble profession and those that diligently undertake this work, bear the brunt of those that don’t.

My sincere urge is therefore that the Africa wide insolvency harmonization process must be collective requiring the indulgence of all concerned stakeholders, namely the respective Governments, public policy makers, private practitioners, banks etc

Despite the ongoing process of insolvency legislative reforms, we should be cautious and should not in the least assume that the insolvency environment in Africa is necessarily any more hostile than in Europe or USA. Every continent has a different culture in dealing effectively with insolvency.

But we must not relent and press on ahead with the reform process with the following key considerations

a) training and awareness programs be developed to draw the attention of both borrowers and lenders to the benefits of amicable and out of court settlements.

b) there are cultural considerations which vary among
regions and countries that should be observed by creditors in addressing the challenges related to insolvency. For example, privacy and confidentiality are critical in maintaining the goodwill of the borrower in private family owned businesses.

c) there must be publicity on the insolvencies that have been well managed to the benefit of all parties;

d) Institutional Capacity building

Do our lawyers and courts have all the necessary skills, experience and tools to manage insolvencies of increasingly complex business enterprises, some spanning several borders?

How can skills be developed in this critical area?

The issue therefore is both institutional and cultural.

Simply putting in place new legislation and regulations copied from another region or country is unlikely to succeed. There must be a commitment to the process of reform and meaningful implementation; one which engages at a local level with stakeholders – a departure from the “one size fits all” solution.
I hope this Round Table meeting offers you the opportunity to share your experiences and learn from each other. I also hope you take away a vision of where we can take our countries and how we might make the journey.

We should not be afraid to accept that there may be better ways to do business. We should not be afraid to learn from the sessions over the next two days whether it is legislative reform and capacity building in the judiciary or improving the quality of insolvency practitioners or better intervention strategies by lenders.

I would like to conclude by thanking INSOL International President, for extending this invitation to me to address you all today, and also to thank the co-chairs of this Africa Round Table, Mr Adam Harris of Bowman Gilfillan Advocates, South Africa and Mr Nitesh Patel of PwC Zambia, together with the rest of the organising committee for organising and facilitating this important meeting in Lusaka.

Despite the busy next two days, I hope you find time to enjoy the warm October weather and delights of Lusaka.

Thank you.